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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JOHN BRADSTREET and VALI
11 EBERHARDT,

12 Plaintiffs,

13 v.

14 UNITED STATES OF AMERICA,

15 Defendant.

No. C04-530Z

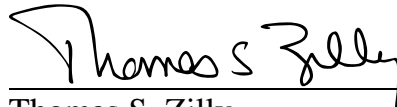
ORDER

16 The Court GRANTS Defendant's Motion to Dismiss for Lack of Jurisdiction Pursuant
17 to I.R.C. § 7422(e), docket no. 16. Under 26 U.S.C. § 7422(e), a district court "shall lose
18 jurisdiction of [a] taxpayer's suit" when the IRS mails a notice of deficiency for the same tax
19 year in question prior to the hearing of the suit and the taxpayer files a petition with the Tax
20 Court for redetermination of the asserted deficiency. 26 U.S.C. § 7422(e); see also Statland
21 v. United States, 178 F.3d 465, 471 (7th Cir. 1999). A valid deficiency notice is a pre-
22 requisite to Tax Court jurisdiction. Scar v. Commissioner of Internal Revenue, 814 F.2d
23 1363, 1366 (9th Cir. 1987). "Before issuing a notice of deficiency . . . the Commissioner
24 must make an actual determination of the taxpayer's liability." Kantor v. Commissioner of
25 Internal Revenue, 998 F.2d 1514, 1521 (9th Cir. 1993).
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1 The Court finds that the Plaintiffs have filed a petition for redetermination with the
2 United States Tax Court with respect to the same income tax year, 1999, at issue in this
3 refund suit. See Amended Hankla Decl., docket no. 21, Exhibit. After reviewing the Notice
4 of Deficiency and accompanying calculation statement, the Court finds that there is no
5 blatant error in the calculation statement which would suggest that the Commissioner had not
6 made a determination using the taxpayers' return for tax year 1999. See Hankla Decl.,
7 docket no. 34, Exhibit. The Court concludes that the deficiency notice was valid; therefore,
8 this Court lost jurisdiction in this case when Plaintiffs filed their petition for redetermination.
9 For these reasons, the Court DISMISSES this action for lack of subject matter jurisdiction.

10 IT IS SO ORDERED.

11 DATED this 16th day of May, 2005.

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14 Thomas S. Zilly
15 United States District Judge
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